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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

Ohio River Park,
Allegheny County, Pennsylvania

Neville Land Company,

RESPONDENT

Proceeding Under Sections 104
and 122 of the Comprehensive
Environmental Response,
Compensation, and Liability Act
of 1980 as amended by the
Superfund Amendments and
Reauthorization Act of 1986,
Pub. L. No. 99-499,
100 Stat. 1613 (1986)
(42 U.S.C. §§ 9604 and 9622)

Docket No. III-91-74-DC

ADMINISTRATIVE ORDER BY CONSENT

FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

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ADMINISTRATIVE ORDER BY CONSENT

FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

The parties to this Administrative Order by Consent ("Consent Order" or "Order") -- Neville Land Company ("Respondent") and the United States Environmental Protection Agency ("EPA") -- have agreed to the entry of this Consent Order, and the Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Consent Order concerns the preparation and performance of a remedial investigation and feasibility study ("RI/FS"), as well as reimbursement for costs incurred by EPA in connection with the RI/FS, to the extent incurred in accordance with applicable law and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, for the Ohio River Park Site located on Neville Island in Allegheny County, Pennsylvania ("Site"), including costs of EPA's performance of the Risk Assessment (as defined in Section II.A, below). It is therefore ordered that:

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I. JURISDICTION

- A. This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604 and 9622, as amended ("CERCLA"), and delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated to the Regional Administrators of EPA by EPA Delegation Nos. 14-14-A and 14-14-C, the latter of which was signed on September 13, 1987.
- B. The Respondent consents to and will not contest EPA jurisdiction regarding this Consent Order.
- C. Entry by the Respondent into this Consent Order shall not constitute or be construed as an admission of liability and is subject to the provisions set forth below; provided, however, that the Respondent agrees not to contest EPA's jurisdiction to issue and enforce this Consent Order in any action by EPA to enforce the terms of this Consent Order.

II. STATEMENT OF PURPOSE

- A. In entering into this Consent Order, the mutual objective of EPA and Respondent is to complete satisfactorily an RI/FS for the Site as hereinafter defined. The Remedial Investigation shall characterize the geology and hydrogeology of the Site, determine the nature and extent of the contamination at or from the Site, and characterize all ecological zones including terrestrial, riparian, wetlands, aquatic/marine, and transitional, in accordance with all applicable EPA guidance, policies and procedures, as set forth in Section VIII.C of this Consent Order, and the NCP. EPA shall prepare, for inclusion with the RI and FS Reports, a determination of the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of any hazardous substances, pollutants or contaminants at or from the Site ("Risk Assessment"). The Feasibility Study shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site consistent with the Risk

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Assessment performed by EPA (including any adverse impacts to human health or the environment that may result from the activities associated with remediation). The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP at 40 C.F.R. Part 300 and remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, the Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621.

- B. The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the NCP, 40 C.F.R. Part 300, and shall be conducted in compliance with all applicable EPA guidance, policies and procedures as set forth in Section VIII.C of this Consent Order. Respondent shall not be responsible for preparing a Risk Assessment as set forth in EPA's RI/FS guidance. Approval by EPA of the activities conducted by the Respondent pursuant to this Consent Order shall constitute a determination by EPA that those activities are consistent with the NCP, provided such activities are conducted in conformance with such approvals, including all modifications.
- C. Subject to Section VIII.C.2 of this Consent Order, the activities conducted under this Consent Order shall provide the necessary information for the RI/FS, and for a record of decision ("ROD") for selection of a remedial action that is consistent with CERCLA and the NCP. EPA's approval of the Work Plan in accordance with Section VIII, and all subsequent modifications in accordance with Section XXV, shall constitute a determination by EPA that the work performed pursuant to the approved Work Plan and all subsequent modifications provide the necessary information for an RI/FS including the Risk Assessment, and for a ROD for selection of a remedial action that is consistent with CERCLA and the NCP, if the Work Plan is implemented in conformance with such approval made pursuant to this Consent Order and all subsequent modifications.

III. EPA'S FINDINGS OF FACT

EPA has found the following which the Respondent does not admit:

- A. The Site consists of three adjacent unoccupied pieces of

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property ("Parcels 1, 2 and 3") on the western end of Neville Island, which is located in the Ohio River approximately 10 miles downstream from Pittsburgh, Pennsylvania, as shown in Attachment A. The Site comprises approximately 32 acres and includes all areas affected by Parcels 1, 2 and 3 where hazardous substances from such parcels have migrated or come to be located.

- B. Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania.
- C. Respondent is the current owner of the Site.
- D. On May 22, 1940, Green Bag Cement Company of PA ("GBCC") acquired Parcels 1, 2 and 3. On March 25, 1946, GBCC transferred Parcels 1, 2 and 3 to Neville Island Land Company ("NILC"), a wholly owned subsidiary of Pittsburgh Coke and Chemical Company ("PC&C"). On December 10, 1964, NILC and PC&C merged; PC&C was the surviving corporation and became the owner of all three parcels. PC&C transferred Parcels 1 and 2 to the Respondent on August 14, 1970 and Parcel 3 to the Respondent on August 20, 1970. On March 4, 1977, the Respondent transferred all three parcels to Allegheny County for development as a county park. During 1978, while the park was under development, Allegheny County discovered hazardous wastes at the Site and ceased development of the park. Allegheny County returned all three parcels to the Respondent on June 6, 1980.
- E. The Site was used as farmland until approximately the early 1950's, when the Site was first used for the disposal of industrial wastes. Industrial wastes were disposed of at the Site until approximately the mid-1960's. These wastes generally consisted of agricultural chemical wastes and coke oven by-products, such as tar decanter and tar acid sludges.
- F. In April 1989, the Pennsylvania Department of Natural Resources, under agreement with EPA, conducted a Site Inspection in accordance with the NCP. The Site Inspection indicated the presence of hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited to, benzene, toluene, acetic acid, 2,4,6-trichlorophenol and 2,4-dichlorophenol.
- G. On November 9, 1989, the Roy R. Weston Technical Assistance Team conducted sampling of the soil and drainage outfall at the Site for the EPA Region III Western Response Section. Such sampling data indicated the presence of hazardous substances as defined in Section 101(14) of CERCLA, 42

U.S.C. § 9601(14), including, but not limited to, lindane, heptachlor, chlordane, arsenic, and polynuclear aromatic hydrocarbons (PAHs), including benzo(a)pyrene, benzo(a)anthracene and benzo(a)fluoranthene.

- H. Pursuant to Section 104(i)(6)(A) of CERCLA, 42 U.S.C. § 9604(i)(6)(A), the Health Assessment Team of the Pennsylvania Department of Health, under a cooperative agreement with the Agency for Toxic Substances and Disease Registry, conducted a health assessment for the Site and issued its report ("Health Assessment") on June 24, 1991. In preparing the Health Assessment, the Health Assessment Team used data from the sampling of the soil and drainage outfall at the Site that was conducted on November 9, 1989 by the Roy R. Weston Technical Assistance Team for the EPA Region III Western Response Section.
- I. The Health Assessment states that:
1. Concentrations of PAHs, which were found in a coal tar seep on the Site, may present an increased risk of adverse health effects if Site workers or Site trespassers are chronically exposed to direct contact with the waste.
 2. Concentrations of lindane, heptachlor, chlordane, and arsenic present an increased risk of adverse health effects for children if they are chronically exposed to contaminated soils over a five-year period.
- J. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the CERCLA National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 30, 1990, 55 Fed. Reg. 35502.

IV. EPA'S CONCLUSIONS OF LAW

EPA has made the following Conclusions of Law which the Respondent does not admit:

- A. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. "Hazardous substances," as defined in Section 101(14) of

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CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Site and are currently present there.

- D. The presence of hazardous substances at the Site and past, present and/or potential migration of hazardous substances at or from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- E. The Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

V. EPA'S DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

- A. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.
- B. The Respondent is qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the work properly and promptly if the Respondent complies with Section VIII of this Consent Order.

VI. PARTIES BOUND

- A. This Consent Order shall apply to and be binding upon EPA, its officers, representatives, agents and successors, and Respondent, its successors and assigns in accordance with applicable law, and upon all contractors and consultants acting under or for the Respondent. No change in ownership or corporate or partnership status of the Respondent or the Site will in any way alter the status of the Respondent or its responsibilities under this Consent Order.
- B. In the event of any change in ownership or control of Respondent or any change that would affect the Respondent's ability to carry out the terms of this Order, Respondent shall notify EPA, in writing, no later than five (5) business days prior to the effective date of the change, of the nature of the change and the anticipated date of the change. Respondent shall provide a copy of this Consent Order to its successor(s) before the proposed change becomes irrevocable. Furthermore, the Respondent shall provide EPA with a copy of any indemnification agreement to which the Respondent is a party and which affects the Respondent's

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ability to carry out its responsibilities under this Consent Order within five (5) days of the execution of such agreement. In accordance with Section 107(e)(1) of CERCLA, 42 U.S.C. § 9607(e)(1), no such indemnification shall alter a party's obligations under this Consent Order.

- C. In the event of any change in ownership or control of the Site, Respondent shall notify EPA, in writing, at least thirty (30) days in advance of the change, of the name, address and telephone number of the transferee in interest, the proposed date of the transfer, and the nature of the proposed transfer or change. Further, Respondent shall provide EPA with a copy of any indemnification agreement which may be executed within five (5) days of its execution. Respondent shall provide a copy of this Consent Order to the transferee in interest prior to any agreement for transfer.
- D. The Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, consultants, supervisory personnel, and agents retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within one (1) week of the effective date of this Consent Order or on their date of retention, whichever is later, and shall provide in all such contracts that work shall be performed in compliance with the terms of this Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for complying with this Consent Order and for ensuring that its contractors, subcontractors, laboratories, consultants, supervisory personnel and agents comply with this Consent Order.

VII. NOTICE TO THE COMMONWEALTH

- A. EPA is notifying the Commonwealth of Pennsylvania (the "Commonwealth") that this Consent Order is being issued by providing a copy to the Commonwealth.
- B. All information and documents submitted by the Respondent to EPA shall be submitted to the Commonwealth at the same time they are submitted to EPA. The information and documents shall be forwarded to:

Pennsylvania Department of Environmental
Resources
Bureau of Waste Management
121 S. Highland Ave.
Pittsburgh, PA 15206

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VIII. WORK TO BE PERFORMED

- A. Respondent shall perform a RI/FS at the Site, in accordance with the requirements of CERCLA, the NCP, this Consent Order (including any EPA-approved documents submitted as a requirement of this Consent Order) and all applicable guidance, policies and procedures as set forth in Section VIII.C of this Consent Order. EPA's approval of the RI/FS Work Plan, the RI and FS Reports, and modifications thereto, in accordance with this Section shall constitute a determination by EPA that the RI/FS conducted by the Respondent is in accordance with CERCLA, this Consent Order, all applicable guidance, policies and procedures as set forth in Section VIII.C of this Consent Order, and is consistent with the NCP if the work is conducted in accordance with the approved Work Plan, all subsequent modifications of the Work Plan pursuant to Section XXV and other relevant provisions of this Consent Order, and all applicable guidance, policies and procedures as set forth in Section VIII.C, below.
- B. All response work performed pursuant to this Consent Order shall be under the direct supervision of qualified personnel.
1. Within sixty (60) calendar days after the effective date of this Order, Respondent shall notify the EPA in writing of the identity and qualifications of the primary contractor(s) and/or supervisory personnel to be used in carrying out the work to be performed pursuant to this Order. Respondent has a continuing obligation to notify EPA of selection of contractors, subcontractors, and supervisory personnel, and to provide EPA with the identity and qualifications of contractors, subcontractors and supervisory personnel, and any addition or change, hired to do work pursuant to this Order, within ten (10) days of such addition or change.
 2. EPA may, in its discretion, disapprove of the use of any contractor, subcontractor and/or supervisory personnel EPA considers to be unqualified or otherwise unable to perform the work, or to continue to perform any part of the work required by this Consent Order. In the event of a disapproval, Respondent shall notify EPA within ten (10) days of receipt of such disapproval of the identity and qualifications of the person, contractor, subcontractor or supervisory personnel that

will replace the one that was disapproved.

3. In the event EPA subsequently disapproves of any replacement contractor, subcontractor or supervisory personnel, EPA reserves the right to conduct a complete RI/FS, in accordance with Section VIII.N, below, and to seek reimbursement from the Respondent and/or other parties for such work.
 4. EPA will provide a notice of acceptance of the prime contractor to the Respondent. This shall not interfere with EPA's right to subsequently disapprove of such contractor as provided in Section VIII.B.2.
- C. Work shall be performed in accordance with the terms, conditions and schedule of an approved RI/FS Work Plan (hereinafter "Work Plan") to be submitted by the Respondent within sixty (60) days after the Respondent receives a notice of contractor acceptance from EPA. The Work and Work Plan shall be consistent with CERCLA, the NCP, all relevant EPA regulations, and "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive 9355.3-01), guidelines referenced therein, guidelines referenced in the Work Plan, and any subsequent applicable amendments or modifications to the foregoing; provided, Respondent is required to comply with any such amendments or modifications only if it has been given notice fourteen (14) days prior to the date of performance of any task affected by such amendments or modifications. Said notice may be by publication in the Federal Register. In the event Respondent must comply with any such amendments or modifications and such compliance results in a delay in completing any task affected thereby, EPA may, in its discretion, extend the due date of such task by such time as is necessary to complete the task on an expedited basis. The Work Plan shall include, but not be limited to:
1. a comprehensive summary of known Site conditions;
 2. a discussion and copies of previous information studies and data performed with respect to the Site which the Respondent wishes to use in the RI/FS;
 3. a discussion of data gaps;
 4. methodology and logistics for obtaining additional information in order to meet the objectives of the RI/FS;

5. data quality objectives;
6. format (i.e., computer disc or equivalent) for presentation and transmittal of RI data to assist EPA's preparation of the Risk Assessment;
7. a sampling and analysis plan (including a Field Sampling Plan and a Quality Assurance Project Plan);
8. a health and safety plan in accordance with the Occupational Safety and Health Administration (OSHA) Regulations at 29 C.F.R. § 1910.120 and "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive 9355.3-01);
9. a plan for identifying and characterizing all ecological zones and potential receptors, and the laboratory testing methods (e.g., bioassays) to be used to evaluate impacts to biological systems in accordance with applicable guidance;
10. a preliminary listing and discussion of potentially applicable or relevant and appropriate requirements ("ARARs"), a plan for refinement of ARARs throughout the RI/FS process, including proposed clean-up levels; and
11. a schedule for expeditious implementation and completion of the following:
 - a. a comprehensive description of effects, if any, on natural resources, including wetlands, if appropriate;
 - b. a Candidate Technologies Memorandum, which is a strategy for identifying the need for and carrying out treatability studies, and which is further described in Section VIII.H.3, below; and
 - c. the RI and FS Reports, including projected start-up and delivery dates for milestone field work, treatability studies, written reports (including draft and final RI and FS Reports), and for meetings with EPA to present progress information about the Site.

Upon request of Respondent, EPA will confer with the Respondent for the purpose of "pre-scoping" the Work Plan and for

the discussion of or distribution of relevant EPA guidance documents and written policies regarding the conduct of an RI/FS, and to discuss the data which needs to be collected by the Respondent in order to allow EPA to complete the Risk Assessment for the Site. Any delays in the holding of such a meeting shall not excuse any delay in Respondent's obligation to comply with the project schedule.

- D. EPA shall notify Respondent in writing of EPA's approval or disapproval of the Work Plan, including the use of existing data in the RI/FS, and, if EPA disapproves of the Work Plan, the reasons for such disapproval, including identified deficiencies where appropriate. However, the level of detail of the identified deficiency need not be so specific as to constitute a rewriting of all or part of the Work Plan. Failure of Respondent to provide an RI/FS schedule that reflects an expeditious project schedule will be a reason for disapproval of the Work Plan.
- E. In the event of Work Plan disapproval Respondent shall, within thirty (30) days of receipt of the EPA notice, revise the Work Plan to respond to and/or correct the deficiencies in the Work Plan and resubmit the revised Work Plan to EPA.
- F. EPA shall notify Respondent in writing of EPA's approval or disapproval of the revised Work Plan and the reasons for any disapproval.
- G. Upon approval by EPA, the Work Plan shall be incorporated into this Order and the terms and schedules in the Work Plan shall become requirements of this Order. The effective date of the Work Plan shall be five (5) business days following the date on which EPA forwards written approval of the Work Plan to the Respondent.
- H. Respondent shall implement the Work Plan according to its approved terms, conditions and schedules, and shall prepare and submit the RI and FS Reports for EPA's review as specified in the Work Plan and its accompanying schedule. In addition to the requirements of Paragraph C of this Section VIII, the Work Plan shall include a schedule for the submission of the following elements:
 - 1. An RI Report which includes, but is not limited to, (a) a Site history (including past operations and releases), (b) a summary of previous investigations and cleanup actions, (c) a Site description (including physical setting, climate, surface water hydrology and quality, geology, soils, hydrogeology and ground water

quality, fractures, ground water movement, and ecology), (d) all chemical concentration data collected during the RI (including data collection methods, maps of sample locations, summary data tables, and a copy of chemical data in a computer-readable format), and (e) a summary of potentially exposed populations (including locations, current land uses, alternative future land uses, activity patterns, and subpopulations of potential concern).

2. An FS Report which utilizes the Risk Assessment prepared by EPA and which develops an appropriate range of waste management options that are evaluated through the development and screening of alternatives. The report shall contain a comparative analysis of the remedial alternatives against the nine evaluation criteria as described in the NCP and EPA's RI/FS guidance.
3. Candidate Technologies Memorandum. The Respondent shall submit to EPA, in accordance with the schedule contained in the approved Work Plan, a Candidate Technologies Memorandum ("Technologies Memorandum"). The Technologies Memorandum shall identify what, if any, candidate remedial technologies are applicable. EPA shall approve or disapprove of the Technologies Memorandum in writing including, if EPA disapproves of the Technologies Memorandum, the reasons(s) for such disapproval. If EPA disapproves of or requires revisions to the Technologies Memorandum, in whole or in part, Respondent shall amend and submit to EPA a revised Technologies Memorandum which addresses or responds to EPA's comments, within twenty-one (21) days of receiving EPA's comments, or longer if agreed to by the designated project managers. EPA shall approve or disapprove of the revised Technologies Memorandum in writing including, if EPA disapproves of the Technologies Memorandum, the reasons(s) for such disapproval.
 - a. Treatability Testing Work Plan. If EPA determines based on, among other things, its review of the Technologies Memorandum that treatability testing is required, the Respondent shall submit a treatability testing work plan ("TTWP"), including an expeditious schedule, sampling and analysis plan, and a health and safety plan in accordance with the schedule contained in the approved Work Plan. EPA shall approve or disapprove of the TTWP

in writing including, if EPA disapproves of the TTWP, the reason(s) for such disapproval. If EPA disapproves of or requires revisions to the TTWP, in whole or in part, the Respondent shall amend and submit to EPA a revised TTWP which addresses or responds to EPA's comments within twenty-one (21) days of the Respondent's receipt of notice of disapproval. This deadline may be extended beyond twenty-one (21) days by written agreement of the designated project managers. EPA shall approve or disapprove of the revised TTWP in writing including, if the revised TTWP is disapproved, the reason(s) for such disapproval. The effective date of the TTWP shall be the date on which the Respondent receives written approval from EPA.

- b. Treatability Testing. The Respondent shall conduct treatability testing in accordance with the TTWP, except where the Respondent can demonstrate to EPA's satisfaction that it is not needed.
 - c. Treatability Study Evaluation Report. Respondent shall submit a treatability study evaluation report ("TSER") as provided in the approved TTWP and in accordance with the schedule contained in the approved Work Plan as may be modified in accordance with Section VIII.H.3.d, below. EPA shall approve or disapprove of the TSER in writing including, if EPA disapproves of the TSER, the reason(s) for such disapproval. If EPA disapproves of or requires revisions to the TSER, in whole or in part, the Respondent shall amend and submit to EPA a revised TSER which addresses or responds to EPA's comments within twenty-one (21) days of the Respondent's receipt of notice of disapproval. This deadline may be extended beyond twenty-one (21) days by written agreement of the designated project managers.
 - d. The schedule of the RI/FS Work Plan shall be modified to take into account the time necessary for treatability studies, if any.
- I. Beginning thirty (30) days subsequent to the Respondent's receipt of approval of the Work Plan identified in Section VIII.C, above, and continuing until termination of the RI/FS in accordance with Section XXVIII hereof, the Respondent shall provide EPA with a progress report for each preceding

calendar month. The progress reports shall be due on the 15th day of each month following the subject month. At a minimum, these progress reports shall include:

1. a description of the actions that have been taken toward achieving compliance with this Consent Order and the tasks set forth in the approved Work Plan;
 2. all results of sampling, tests, analytical data (after it has undergone Quality Assurance/Quality Control ("QA/QC") review and interpretations) and all other information received by the Respondent otherwise required to be provided to EPA pursuant to this Consent Order;
 3. a description of all data gathering anticipated and other activities scheduled for the next 30-day period pursuant to this Consent Order or that could affect the conduct of the RI/FS; and
 4. a description of any problems encountered, any actions taken or to be taken to remedy or mitigate such problems, and a schedule of when such actions will be taken.
- J. The Respondent shall meet and/or consult with EPA technical representatives within thirty (30) days after receiving approval of the Work Plan to facilitate execution of the Work Plan. EPA may, in its discretion, waive the meeting and/or consultation if it determines that the technical issues were resolved during the pre-scoping or the scoping meetings.
- K. Not less than thirty (30) days prior to submittal of the draft RI Report to EPA, Respondent and its contractor(s) shall make a presentation to EPA at which Respondent shall discuss the draft RI Report, including its findings, and the format in which the Respondent will provide EPA with data it needs to prepare the Risk Assessment, which data will be provided at the same time the draft RI Report is submitted. The Respondent shall present to EPA a summary of the available documentation supporting all data discussed and/or presented at the meeting (except for data supplied by EPA or its contractors). Subject to Section XIII.E, below, Respondent shall supply additional documentation requested by EPA within thirty (30) days of the meeting.

EPA will provide sufficient information concerning the baseline risks such that the Respondent can begin drafting

the FS Report. This information will normally be in the form of two or more Risk Assessment memoranda prepared by EPA. One memorandum will generally include a list of the chemicals of concern for human health and ecological effects and the corresponding toxicity values. Another should list the current and potential future exposure scenarios, exposure assumptions, and exposure point concentrations that EPA plans to use in the Risk Assessment.

EPA will provide a copy of its Risk Assessment to the Respondent for review and comment. Comments on the Risk Assessment, if any, are due to EPA within thirty (30) days of the Respondent's receipt of the Risk Assessment from EPA. EPA will respond to the Respondent's comments, if any. Said response is not subject to Section XVII (Dispute Resolution).

Not later than fifteen (15) days after receipt of EPA's response to Respondent's comments, Respondent and its contractor(s) shall make a presentation to EPA at which Respondent shall discuss the remedial alternatives and proposed cleanup levels to be evaluated in the FS Report. Respondent shall be prepared at such meeting to present a summary of the data supporting its findings. If Respondent does not comment on the Risk Assessment, Respondent and its contractor(s) shall make the presentation within thirty (30) days of Respondent's receipt of the Risk Assessment from EPA.

- L. EPA will review the draft RI and FS Reports submitted to it by Respondent. EPA will notify Respondent in writing of its approval or disapproval of these reports or of any part thereof. In the event of any disapproval, EPA will specify the deficiencies in writing. However, the level of detail in the identified deficiency need not be so specific as to constitute a rewriting of all or part of the RI or FS Report. Within thirty (30) days after receipt of notification of such draft report disapproval, the Respondent shall amend and submit to EPA a final report that responds to and/or remedies the specified deficiencies. If EPA disapproves of either final report or if either final report does not fully reflect EPA's directions for change, and if no request for Dispute Resolution is made pursuant to Section XVII, EPA may either: (1) allow Respondent an additional opportunity to submit an acceptable final report; or (2) trigger the consequences of Section VIII.N, below. EPA will advise Respondent of its decision to proceed under (1) or (2), above, in writing, including reasons for such decision. EPA's decision to proceed under (1) or (2),

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above, shall be based on its sole discretion and shall not be subject to review. Approval of the final RI and FS Reports shall be in writing.

- M. EPA and Respondent recognize that, while undertaking an RI/FS, certain information and/or knowledge about the Site or technology or investigative methods may arise from public meetings, data collection, etc., that may require modification to the Work Plan or to the field work. Any such modifications shall be made in conformance with Section XXV.B, below.
- N. In the event EPA disapproves of any proposed replacement contractor, subcontractor or supervisory personnel, or disapproves of any revised submission required under this Section or work redone by the Respondent under this Consent Order, and no request for Dispute Resolution is made pursuant to Section XVII, or in the event Respondent fails to make any such submission or perform any such work, EPA reserves the right to perform all or any portion of the work required by this Consent Order, or to enter into an agreement with, or issue an order to, any other party to perform all or any portion of such work, in accordance with the requirements of CERCLA and the NCP, and to seek reimbursement of its costs pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and/or to seek any other appropriate relief.
 - 1. In the event EPA elects to perform all or any portion of the work required by this Consent Order or to oversee performance of all or any portion of such work by a party other than Respondent, EPA will so notify Respondent in writing. Such notification ("Takeover Notice") will identify the work required by this Consent Order which Respondent shall not perform ("Takeover Work"). Upon receipt of any such Takeover Notice from EPA, Respondent shall be released from any further obligation under this Consent Order to complete such Takeover Work. The Respondent shall not be released, however, from any other obligations under this Consent Order and shall specifically remain liable for, among other things:
 - a. stipulated penalties for violations of this Consent Order which occurred prior to Respondent's receipt of any such Takeover Notice; provided, however, that stipulated penalties for violations of this Consent Order relating to Takeover Work shall continue to accrue only until (i) EPA, or

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another party pursuant to an agreement with or order by EPA, commences performance of such work, or (ii) sixty (60) days from the date of Respondent's receipt of the Takeover Notice, whichever is less; and

- b. oversight costs incurred prior to Respondent's receipt of the Takeover Notice.

Further, the Respondent shall remain subject to a claim for statutory penalties and costs incurred or to be incurred by EPA with respect to the Site. Respondent has not waived any rights it may have to contest statutory penalties and costs incurred after EPA commences performance of the Takeover Work.

- 2. Unless otherwise provided in the Takeover Notice, Respondent shall not be released from its obligations under this Consent Order to perform any work required by this Consent Order other than the Takeover Work and shall remain subject to stipulated penalties and reimbursement of oversight costs relating to all work which is not Takeover Work.
- O. EPA reserves its right to disapprove of work performed by the Respondent and reserves its right to request that Respondent perform response actions in addition to or modified from those required by the approved Work Plan, if it determines that such actions are necessary and that Respondent is qualified and can carry out such actions properly and promptly. In the event that Respondent declines to perform such additional and/or modified actions, EPA reserves the right to undertake such action(s) and to seek reimbursement of its costs and/or to seek any other appropriate relief.
- P. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred or seek any other appropriate relief. However, to the extent provided in CERCLA and the NCP, and considering the exigencies of the circumstances, EPA shall grant the Respondent the opportunity to complete such work.
- Q. The RI and FS reports shall contain a certification, in the form set forth below, signed by a responsible official of the Respondent, or an authorized representative of the Respondent.

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1. The term "responsible official" means as follows:
 - a. For a corporation: a responsible corporate officer. A responsible corporate officer means: (a) A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumer Price Index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
2. A person is a duly authorized representative within the meaning of this subsection only if:
 - a. The authorization is made in writing by a person described in Section VIII.Q.1 of this Consent Order; and
 - b. The authorization specifies either an individual or a position within a Respondent's organization responsible for overseeing performance of the RI and FS.

However, the EPA reserves the right to disapprove the duly authorized representative. Such disapproval shall be in writing and shall state the reasons therefor.

3. The certification shall state as follows:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

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penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

IX. PUBLIC COMMENT

Upon approval by EPA of the final FS Report, EPA will make the administrative record for the proposed remedial action, including the RI and FS Reports and the Risk Assessment, available to the public for review and comment for, at a minimum, a thirty (30) day period, pursuant to 40 C.F.R. § 300.430. Following the public review and comment period, EPA will notify the Respondent which remedial action alternative(s) is selected for the Site.

X. DESIGNATED PROJECT MANAGERS

- A. Within ten (10) days of the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Manager. EPA's Project Manager shall have the authorities specified in the NCP and this Consent Order. Each Project Manager shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Managers by controlled or certified mail, with copies to such other persons as EPA, the Commonwealth and Respondent may respectively designate.
- B. EPA and the Respondent shall each have the right to change their respective Project Manager(s). Such change shall be accomplished by notifying the other party in writing at least seven (7) days prior to the change.
- C. When conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. § 300.415, the EPA-designated Project Manager shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof. However, to the extent provided in CERCLA and the NCP, and considering the exigencies of the circumstances, EPA shall grant the Respondent the opportunity to complete such work.
- D. The absence of the EPA Project Manager from the area under

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study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

- E. On or before the effective date of this Consent Order, EPA will arrange for a qualified person(s) to assist it in overseeing and reviewing the conduct of the RI/FS as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a) ("oversight representative(s)").

XI. SITE ACCESS

- A. To the extent that property included in the area under study pursuant to this Consent Order is presently owned or controlled by parties other than Respondent, the Respondent shall use best efforts to obtain Site access agreements from the present owners as soon as possible but no later than thirty (30) days of receipt of approval of the Work Plan. Such agreements shall provide reasonable access as detailed in Paragraphs C and D below, for performance of RI/FS activities by EPA, its authorized representatives, oversight representatives, representatives of the Commonwealth and the Respondent and its authorized representatives. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall so notify EPA, in writing, within ten (10) calendar days regarding all efforts undertaken to obtain access and the failure to obtain such agreements. EPA, solely in its discretion, may then take steps to provide such access.
- B. Best efforts as used in this section shall include, at a minimum, but shall not be limited to, a certified letter from Respondent to the present owners of such property requesting access agreements to permit Respondent and EPA and their authorized and designated representatives to access such property.
- C. EPA and its authorized and designated representatives, including its oversight representatives and the Commonwealth, shall have the authority to enter and freely move about all property owned or controlled by Respondent subject to this Consent Order at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the

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Respondent. In addition, EPA and/or its representatives shall have, for the purposes specified above, the authority to enter, at all reasonable times, all areas at which records related to the performance of the RI/FS are retained. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Confidentiality claims for any material so copied may be asserted in accordance with Section XIII of this Order. Nothing herein shall be interpreted as limiting the inspection and information gathering authority of EPA under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), or any other Federal law.

- D. Respondent agrees to allow EPA and its authorized representatives access to the Site and to any portions of the Site under their ownership or control for the purpose of conducting the RI/FS, including, but not limited to, carrying out the activities specified in Paragraph C of this Section and in the event that EPA take over the work pursuant to Sections VIII.L, N or O, above, and/or XII.D, below.
- E. If Respondent acquires title to or control over any portion of the Site to which it does not presently hold title or control, Respondent agrees that EPA shall have access rights to such property as specified in this Section.
- F. Nothing in this Order shall limit the inspection and information gathering authority of EPA under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), or any other Federal law.

XII. QUALITY ASSURANCE

- A. While conducting sampling and analysis under the Work Plan and/or this Consent Order, the Respondent shall implement quality assurance, quality control and chain of custody procedures in accordance with "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," OSWER Directive 9355.3-01 (October 1988) and technical direction received from EPA at the meeting(s) described in Section VIII.J, above, including but not limited to quality assurance, quality control and chain of custody procedures in accordance with the guidance provided in "EPA NEIC Policies and Procedures Manual," dated May 1978, revised May 1986, EPA 330/978-001-R; "Interim Guidelines and Specifications for Preparing Quality

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Assurance Project Plan," February 1983, QAMS-005/80; "A Compendium of Superfund Field Operations Methods," December 1987, OSWER Directive 9355-0-14; and "Data Quality Objectives for Remedial Response Activities," March 1987, OSWER Directive 9355.0-7B.

- B. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan. Further, as set forth in Section VIII of this Order, Respondent shall not commence sampling required by the Work Plan until EPA approves of the Work Plan.
- C. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondent shall at a minimum:
 - 1. Use a laboratory(ies) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80;
 - 2. Ensure that EPA personnel and EPA authorized representatives are allowed access during normal business hours to the laboratory(ies), records and personnel utilized by the Respondent for analysis of samples collected pursuant to this Consent Order.
 - 3. Prepare a Quality Assurance Project Plan ("QAPjP") for the sample collection and analysis to be conducted pursuant to this Consent Order. The QAPjP is to be submitted to the EPA Project Manager for review and approval prior to initiating any field investigations. The QAPjP and Field Sampling Plan ("FSP") must be submitted to EPA as part of the RI/FS Work Plan required in Section VIII.C.6, above. The purpose of the plan is to present, in detail, the data quality objectives, sample collection procedures, and data analysis processes and the procedures to ensure that the objectives are met. The guidances referenced in Paragraph A, above, of this Section shall be used as guidance in the preparation of the QAPjP; additional guidance may be provided by EPA as requested.
 - 4. Ensure that the laboratory(ies) analyzing samples required by this Consent Order use the methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program" ("CLP"). (Current copies are available from the Environmental Services Division ("ESD") QA Section, Annapolis, Maryland at (301) 266-9180.) If any

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parameter to be analyzed for is not one of the parameters for which CLP methods are available, or with respect to non-CLP samples as provided in item 9, below, the laboratory shall use method which are EPA-approved (and which are to be described in the QAPjP).

5. Except with respect to non-CLP samples as provided in item 9, below, ensure that the laboratory(ies) analyzing samples pursuant to this Consent Order agrees to demonstrate its capability to perform analysis in compliance with CLP requirements through the analysis of Performance Evaluation ("PE") samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has satisfactorily analyzed PE samples submitted by EPA or the appropriate state agency within the past six (6) months. Documentation of such PE sample analysis must be submitted to the EPA Project Manager for verification.
6. Conduct an audit of the laboratory(ies) that will analyze samples from the Site at some point during the time the laboratory(ies) is conducting analyses (to be specified in the QAPjP). The audit will be conducted to verify analytical capability. Auditors shall conduct lab audits according to procedures available from the ESD QA Section. Audit reports must be submitted to the EPA Project Manager within fifteen (15) days of completion of the audit. The Respondent must report serious deficiencies to EPA's Project Manager, including all those which adversely impact data quality, reliability or accuracy, and take corrective actions to correct such deficiencies within two (2) business days of the time the Respondent knew or should have known of the deficiency. Laboratories which are Superfund Contract Labs ("CLP" Labs) need not be audited.
7. Conduct at least one appropriate field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the quality assurance and/or sampling plans. A report of the field audit must be sent to the EPA Project Manager within fifteen (15) days of completion of the audit. Respondent must report deficiencies and take corrective actions to correct such deficiencies within two (2) business days of the time the Respondent knew or should have known of the deficiency.

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8. Provide data validation of analyses done by the laboratory(ies) (to be described in the QAPjP). This data validation shall determine data usability and shall be performed in accordance with the Functional Guidelines for Data Review (available from ESD QA Section) for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols the Respondent must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. § 136. The appropriate quality assurance data validation summary reports shall be submitted along with sample data and summary sheets, to the EPA Project Manager at the time sample results are provided to EPA.
 9. Respondent shall be permitted to use non-CLP methods and procedures only as provided in "Data Quality Objectives for Remedial Response Activities," OSWER Directive 9355.0-7B.
- D. In the event that the Respondent fails to use the QA/QC practices and procedures as outlined herein, EPA reserves the right to perform all or any portion of the work required by this Consent Order, or to enter into an agreement with, or issue an order to, any other party to perform all or any portion of such work, in accordance with the requirements of CERCLA and the NCP, and to seek reimbursement of its costs pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and/or to seek any other appropriate relief.
1. In the event EPA elects to perform all or any portion of the work required by this Consent Order or to oversee performance of all or any portion of such work by a party other than Respondent, EPA will so notify Respondent in writing. Such notification ("Takeover Notice") will identify the work required by this Consent Order which Respondent shall not perform ("Takeover Work"). Upon receipt of any such Takeover Notice from EPA, Respondent shall be released from any further obligation under this Consent Order to complete such Takeover Work. The Respondent shall not be released, however, from any other obligations under this Consent Order and shall specifically remain liable for, among other things:
 - a. stipulated penalties for violations of this Consent Order which occurred prior to Respondent's

receipt of any such Takeover Notice; provided, however, that stipulated penalties for violations of this Consent Order relating to Takeover Work shall continue to accrue only until (i) EPA, or another party pursuant to an agreement with or order by EPA, commences performance of such work, or (ii) sixty (60) days from the date of Respondent's receipt of the Takeover Notice, whichever is less; and

- b. oversight costs incurred prior to Respondent's receipt of the Takeover Notice.

Further, the Respondent shall remain subject to a claim for statutory penalties and costs incurred or to be incurred by EPA with respect to the Site. Respondent has not waived any rights it may have to contest statutory penalties and costs incurred after EPA commences performance of the Takeover Work.

- 2. Unless otherwise provided in the Takeover Notice, Respondent shall not be released from its obligations under this Consent Order to perform any work required by this Consent Order other than the Takeover Work and shall remain subject to stipulated penalties and reimbursement of oversight costs relating to all work which is not Takeover Work.

XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

- A. The Respondent shall make available to EPA the results of all sampling and/or tests or other data generated by the Respondent, or on the Respondent's behalf, with respect to the implementation of this Consent Order, and shall submit validated data in monthly progress reports pursuant to Section VIII.I of this Consent Order and the approved Work Plan.
- B. At the request of EPA, the Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondent pursuant to the approved Work Plan. The Respondent shall notify EPA not less than thirty (30) days in advance of any such sample collection activity.
- C. The contents of the administrative record file for the selection of the remedial action shall be determined in accordance with applicable provisions of CERCLA and the NCP.

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Respondent must submit to EPA all documents developed pursuant to the RI/FS upon which selection of the response action may be based. Respondent shall, on or before the date of submission of the final FS Report, submit to EPA all documents or information which Respondent wishes EPA to consider in the selection of a remedy, and which should be considered for inclusion, in accordance with the NCP, in the administrative record for the Site remedy which EPA will develop in accordance with Sections 113(k) and 117(d) of CERCLA, 42 U.S.C. §§ 113(k) and 117(d), and the NCP. If new information becomes available after submission of the final RI and FS, the Respondent may provide such information to EPA to be considered for inclusion in the administrative record as appropriate. Nothing in this section shall preclude the Respondent from submitting information during any public comment periods for selection of the remedial action. The Respondent reserves any rights it may have under applicable law to challenge the contents of the administrative record.

- D. At the request of EPA, Respondent shall provide any of the raw data and/or field notes under its custody or control relating to samples taken at the Site, within thirty (30) days of receipt of such request. If EPA determines that there may be a risk to human health, EPA reserves the right to request the data from the Respondent in a shorter time period pursuant to EPA's authority under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).
- E. All data, factual information and documents submitted by the Respondent pursuant to this Consent Order shall be subject to public inspection unless at the time of submission Respondent asserts a confidential business information or trade secret claim pursuant to applicable Federal law. Respondent may assert such a claim covering information or documentation requested by or provided under this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Physical, sampling, monitoring and analytical data shall not be claimed as confidential by the Respondent. Further, information to be included in the administrative record shall not be claimed as confidential. Information subject to such a claim of confidentiality will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information or documentation when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice

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to the Respondent.

- F. Respondent may withhold those documents which are subject to a privilege applied by Federal courts in actions commenced by the United States. In the event that Respondent withholds a document as privileged, Respondent shall provide EPA with the title of the document(s), the names of the author(s) and addressee(s)/recipient(s), and identification of the privilege(s) asserted. No sampling, monitoring or laboratory analytical data pertaining to work undertaken pursuant to this Consent Order, or material appearing in the administrative record, shall be claimed as privileged or confidential by the Respondent.
- G. Nothing in this Order shall limit EPA's information gathering authority under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), or any other Federal law.

XIV. RECORD PRESERVATION

- A. The Respondent agrees to preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in its possession or in the possession of any of its divisions, officers, directors, employees, agents, contractors, consultants, successors and assigns that relate in any way to implementation of this Consent Order, or to hazardous substance management and/or disposal at the Site, including raw data, despite any document retention policy to the contrary. During this six (6) year period, Respondent will use its best efforts to obtain copies of all documents that relate in any way to the Site and which are in the possession of its employees, agents, accountants, contractors, or attorneys. After this six (6) year period, the Respondent shall notify EPA at least sixty (60) calendar days prior to the destruction of any such document(s). EPA shall then provide, within sixty (60) calendar days of receipt of such notification from the Respondent, written notification to Respondent whether or not it wants to take possession of such document(s). Failure by EPA to request such documents within this time period shall release the Respondent from any further obligation to retain them. Upon request by EPA, the Respondent shall provide EPA with the opportunity to take possession of any such records. Respondent may assert a claim of privilege or business

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confidentiality on records requested by EPA, in accordance with Sections XIII.E and XIII.F, above.

- B. Within thirty (30) days of the effective date of this Consent Order, Respondent shall designate a custodian ("Custodian") for all such records and documents and shall notify EPA of the identity of that Custodian. Respondent may change its Custodian of records and documents upon written notification to EPA of such change.
- C. Respondent further agrees that any agreement between Respondent and an agent, contractor or consultant relating to performance of work under this Consent Order shall require in writing said agent, contractor or consultant to maintain and preserve during the pendency of this Order and for a minimum of six (6) years after its termination, all data, records and documents within its respective possession which relate in any way to this Order or to hazardous substance management and disposal at the Site.
- D. Respondent shall not destroy any records relating to this Consent Order, except in accordance with this Section.

IV. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

- A. For each day or any portion thereof that the Respondent fails to submit a report or document or otherwise fails to achieve any requirement of this Consent Order at the time and in the manner set forth herein, or in the approved Work Plan, including all documents made a part hereof, Respondent shall be liable for and Respondent shall pay, upon demand by EPA, the sums set forth below as stipulated penalties to EPA subject to the terms set forth below. Payment shall be due and owing within thirty (30) days from receipt of EPA's demand letter. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty (30) day period, in conformance with 4 C.F.R. § 102.13.
- B. Checks in payment of stipulated penalties shall be made payable to the Hazardous Substance Superfund and, unless otherwise stated in the demand referenced above, shall be addressed to:

EPA, Region III

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ATTENTION: Superfund Accounting
P.O. Box 360515M
Pittsburgh, PA 15251

All payments shall reference the name of the Site, the Respondent's name and address, and the EPA docket number of this Order. Copies of the transmittal letter and check shall be sent simultaneously to the EPA Project Manager and to the:

Regional Hearing Clerk (3RC00)
U. S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107

- C. For each day or any portion thereof that the Respondent fails to achieve any requirement that is listed below, stipulated penalties shall accrue in the amount of \$1000 per day for the first week, \$1500 per day for the second week, and \$2000 per day for each day thereafter.
1. Submit original and revised Work Plans to EPA in accordance with the schedule and requirements of this Consent Order. See Section VIII herein.
 2. Submit for approval to EPA the identity of supervisory personnel and the Respondent's primary contractor(s) in accordance with the schedule and requirements of this Consent Order. See Section VIII herein.
 3. Submit original and revised Technologies Memoranda, TTWPs, and TSERs to EPA in accordance with the schedule and requirements of this Consent Order and the approved Work Plan. See Section VIII herein.
 4. Provide EPA with monthly progress reports in accordance with the schedules and requirements of this Consent Order. See Section VIII herein.
 5. Submit documentation of PE sample analysis to EPA in accordance with the schedule and requirements of this Consent Order. See Section XII herein.
 6. Submit laboratory audit reports to EPA in accordance with the schedule and requirements of this Consent Order. See Section XII herein.

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7. Submit report of field audit to EPA in accordance with the schedule and requirements of this Consent Order. See Section XII herein.
8. Commence the RI and commence the FS in accordance with the schedules of this Consent Order, the approved Work Plan, and the modifications to the Work Plan that are agreed to by the Respondent and EPA.
9. Submit original and revised RI and FS reports to EPA in accordance with the schedule and requirements of this Consent Order, the approved Work Plan and its subsequent modifications, and the modifications to the Work Plan that are agreed to by the Respondent and EPA.

For each day or any portion thereof that the Respondent fails to submit a report or document required pursuant to this Consent Order and not listed above, and any subsequent modification to such report or document, or otherwise fails to comply with the requirements of this Consent Order not listed above, at the time and in the manner set forth herein or in the approved Work Plan, including all documents made a part hereof, stipulated penalties shall accrue in the amount of \$500 per day for the first week, and \$1000 per day for each day thereafter.

- D. The stipulated penalties set forth in this Section do not preclude EPA from pursuing other penalties or sanctions available to EPA for failure to comply with the requirements of this Consent Order. However, if the Respondent pays stipulated penalties for a specific event of noncompliance and EPA subsequently recovers fines and penalties for the same event in Court, the judicial fines and penalties shall be reduced by the amount of stipulated penalties paid.
- E. Any stipulated penalty assessed for failure to meet an interim requirement stated in the Consent Order or Work Plan may be forgiven in EPA's unreviewable discretion in the event that the corresponding final schedule date for the requirement is met.
- F. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue until such noncompliance is corrected, subject to Sections XV.J, XV.K, and XIX.C below.

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Consent Order for RI/FS
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- G. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order. If, however, any event for which the Respondent pays a stipulated penalty delays any performance of subsequent work under this Consent Order, and if Respondent exercises best efforts to avoid or minimize such subsequent delay, the deadline for such directly affected subsequent work may, in EPA's discretion, be extended accordingly and penalties shall not be assessed for such delays.
- H. If the Respondent in good faith objects to the imposition of stipulated penalties, it may invoke the dispute resolution procedures under Section XVII, below. However, the Respondent shall not dispute the sums set forth above as stipulated penalty amounts. To the extent Respondent does not prevail in the resolution of the dispute, Respondent shall pay the penalties owed within thirty (30) days of receipt of the resolution of the dispute. These penalties shall include all penalties which accrued prior to and during the period of dispute, as set forth in Section XV.F, above. Additional stipulated penalties will not be assessed for failure to pay stipulated penalties during the period of dispute; however, Respondent must pay interest that accrues with respect to unpaid stipulated penalties as provided in Section XV.A, above.
- I. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.
- J. EPA may, in its unreviewable discretion, reduce or forego any stipulated penalties or interest and, in the exercise of such discretion shall consider, among other things, the good faith nature of such dispute.
- K. In the event EPA elects to perform all or any portion of the work required by this Consent Order or to oversee performance of all or any portion of such work by a party other than Respondent, EPA will so notify Respondent in writing. Such notification ("Takeover Notice") will identify the work required by this Consent Order which Respondent shall not perform ("Takeover Work"). Upon receipt of any such Takeover Notice from EPA, Respondent shall be released from any further obligation under this

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Consent Order to complete such Takeover Work. The Respondent shall not be released, however, from any other obligations under this Consent Order and shall specifically remain liable for, among other things:

- a. stipulated penalties for violations of this Consent Order which occurred prior to Respondent's receipt of any such Takeover Notice; provided, however, that stipulated penalties for violations of this Consent Order relating to Takeover Work shall continue to accrue only until (i) EPA, or another party pursuant to an agreement with or order by EPA, commences performance of such work, or (ii) sixty (60) days from the date of Respondent's receipt of the Takeover Notice, whichever is less; and
- b. oversight costs incurred prior to Respondent's receipt of the Takeover Notice.

Further, the Respondent shall remain subject to a claim for statutory penalties and costs incurred or to be incurred by EPA with respect to the Site. Respondent has not waived any rights it may have to contest statutory penalties and costs incurred after EPA commences performance of the Takeover Work.

Unless otherwise provided in the Takeover Notice, Respondent shall not be released from its obligations under this Consent Order to perform any work required by this Consent Order other than the Takeover Work and shall remain subject to stipulated penalties and reimbursement of oversight costs relating to all work which is not Takeover Work.

XVI. FORCE MAJEURE AND NOTIFICATION OF DELAY

- A. Respondent shall perform the requirements of this Consent Order within the time limits and in the manner set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure event. Respondent shall have the burden of proving such a force majeure event. A force majeure event is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by Respondent's best efforts to avoid the delay, and which delays or prevents

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performance by a date or in a manner required by this Consent Order. The requirement that the Respondent exercise "best efforts to avoid the delay" includes using best efforts to mitigate the effects of the potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Force majeure events do not include increased costs of performance, changed economic circumstances, difficulties caused by reasonably foreseeable weather conditions which could have been overcome by best efforts, or failure to obtain Federal, State or local permits unless Respondent demonstrates that complete and timely application for such permits has been made.

- B. The Respondent shall notify the EPA Project Manager or, if the EPA Project Manager is unavailable, the Section Chief of the Western Pennsylvania Section of the EPA Region III Superfund Remedial Branch of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made orally as soon as possible but no later than two (2) business days after Respondent or any of its agents or contractors becomes aware of such delay, or through the exercise of due diligence should have become aware of such delay, and in writing no later than seven (7) days after Respondent or any of its agents or contractors becomes aware, or through the exercise of due diligence should have become aware, of such a delay or anticipated delay. The written notification shall describe fully the nature of the delay, the reasons the delay is beyond the control of Respondent (if applicable), the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid and minimize any such delay.
- C. Any such delay that results from a force majeure event that cannot be overcome by the Respondent's best efforts to avoid the delay shall not be deemed to be a violation of its obligation(s) under this Consent Order, and shall not make the Respondent liable for the stipulated penalties contained in Section XV (Delay in Performance and Stipulated Penalties), above. To the extent a delay is caused by a force majeure event, the schedule affected by the delay

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shall be extended for the time necessary to complete the work on an expedited basis, up to the period of the delay directly resulting from the force majeure event.

- D. Failure of the Respondent to comply with the notice requirements of this Section shall constitute a waiver of the Respondent's right to invoke the benefits of this Section with respect to that event.
- E. In the event that EPA and the Respondent cannot agree that any delay in achieving compliance with the requirements of this Consent Order has been or will be caused by a force majeure event, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution Section", Section XVII of this Consent Order. The Respondent shall have the burden of proving that the delay was caused by a force majeure event which could not have been overcome by the Respondent's best efforts, the necessity of the proposed length of the delay, and that the Respondent took all reasonable measures to avoid and minimize delay.
- F. Modifications to this Order resulting from events which EPA agrees constitute a force majeure event shall be made in accordance with Paragraph A of Section XXV, below, "Subsequent Modification."
- G. Delay in one increment does not automatically justify delay in timely achievement of subsequent increments.

XVII. DISPUTE RESOLUTION

- A. The resolution of any dispute concerning this Order between the Respondent and EPA shall be conducted in accordance with this Section.
- B. If the Respondent objects to any EPA notification or action under this Consent Order, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) days of receipt of such notification or action. Said notice shall set forth the specific points of the dispute, a statement why the position Respondent is maintaining should be adopted, including a statement why such position is consistent with the requirements of this Consent Order and the NCP, the basis for Respondent's position, and any matters which it considers necessary for EPA's

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determination. Receipt by EPA of such notification shall constitute "initiation of Dispute Resolution procedures" for the purposes of this Consent Order. EPA's decision-maker(s) for the purposes of dispute resolution will be an individual(s) maintaining a position within EPA which is at or above the Branch Manager's level.

- C. In order to prevail in any dispute concerning costs under Section XIX, below, Respondent shall have the burden of proving that such costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.
- D. EPA and the Respondent shall have an additional fourteen (14) business days from the initiation of Dispute Resolution procedures to reach agreement. If EPA determines that a decision is particularly complex or that more time is necessary for resolution, EPA can, in its discretion, provide fourteen (14) additional business days for dispute resolution. If agreement cannot be reached on any issue within this fourteen (14) or twenty-eight (28) day period ("the resolution period"), EPA shall provide a written statement of its decision to the Respondent. Receipt of such statement of decision by Respondent shall constitute "resolution" of the dispute as that term is used in this Consent Order.
- E. Following resolution of the dispute, if the Respondent does not perform the work that was the subject of the dispute in accordance with EPA's decision, EPA reserves the right to perform all or any portion of the work required by this Consent Order, or to enter into an agreement with, or issue an order to, any other party to perform all or any portion of such work, in accordance with the requirements of CERCLA and the NCP, and to seek reimbursement of its costs pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and/or to seek any other appropriate relief.
 - 1. In the event EPA elects to perform all or any portion of the work required by this Consent Order or to oversee performance of all or any portion of such work by a party other than Respondent, EPA will so notify Respondent in writing. Such notification ("Takeover Notice") will identify the work required by this Consent Order which Respondent shall not perform ("Takeover Work"). Upon receipt of any such Takeover Notice from EPA, Respondent shall be released from any

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further obligation under this Consent Order to complete such Takeover Work. The Respondent shall not be released, however, from any other obligations under this Consent Order and shall specifically remain liable for, among other things:

- a. stipulated penalties for violations of this Consent Order which occurred prior to Respondent's receipt of any such Takeover Notice; provided, however, that stipulated penalties for violations of this Consent Order relating to Takeover Work shall continue to accrue only until (i) EPA, or another party pursuant to an agreement with or order by EPA, commences performance of such work, or (ii) sixty (60) days from the date of Respondent's receipt of the Takeover Notice, whichever is less; and
- b. oversight costs incurred prior to Respondent's receipt of the Takeover Notice.

Further, the Respondent shall remain subject to a claim for statutory penalties and costs incurred or to be incurred by EPA with respect to the Site. In any action brought by EPA to enforce an order to perform disputed work or activity, or to collect penalties or costs after EPA commences performance of Takeover Work under this Section, Respondent shall have the right to contest the relief sought and to judicial review of the resolution, to the extent provided under Section 113 of CERCLA, 42 U.S.C. § 9613.

2. Unless otherwise provided in the Takeover Notice, Respondent shall not be released from its obligations under this Consent Order to perform any work required by this Consent Order other than the Takeover Work and shall remain subject to stipulated penalties and reimbursement of oversight costs relating to all work which is not Takeover Work.
- F. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA pursuant to this Consent Order shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this Order.

- G. The existence of a dispute, as defined in this Section, and EPA's consideration of matters placed into dispute shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process. EPA may, in its discretion, extend schedules directly related to the dispute in this Consent Order or approved in the Work Plan.
- H. The existence of a dispute under this Section shall not expand the time frame for completing particular tasks under this Order or the Work Plan, and the task must be completed in the remaining amount of time originally specified in the Order or Work Plan, unless EPA, in its discretion, decides to allow more time for such task. In the event the Respondent prevails in the dispute, the time frame for completion of the task directly related to the dispute will be extended by a time period commensurate with the timely prosecution of the dispute. In the event the Respondent does not prevail in the dispute, the time frame for completion of the task directly related to the dispute may, in EPA's discretion, be extended by a time period commensurate with the timely prosecution of the dispute if EPA determines that the dispute was raised in good faith.
- I. Subject to Section XIX.C, below, while a matter is under dispute, stipulated penalties will continue to accrue, if applicable, in accordance with Section XV, above. EPA may, in its unreviewable discretion, defer collection of said penalties until the dispute is resolved or such other time as EPA deems appropriate and at that time EPA may, in its unreviewable discretion, forego such collection for all or a portion of the penalty involved. Stipulated penalties shall not be owed or collectible if the Respondent prevails in the dispute.
- J. The Respondent may submit to EPA documents relating to the resolution of disputes for inclusion in the administrative record, if appropriate under the applicable provisions of CERCLA and the NCP. The Respondent reserves any rights it may have under applicable law to challenge the contents of the administrative record.
- K. EPA and the Respondent reserve all legal remedies and defenses otherwise available under Federal law. Nothing in this or any other section of this Consent Order shall alter the timing or scope of review available to the parties under

Section 113 of CERCLA, 42 U.S.C. § 9613.

XVIII. RESERVATION OF RIGHTS

- A. Except as expressly provided in this Consent Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including but not limited to the right to seek injunctive relief, and imposition of statutory penalties, fines and/or punitive damages. Nothing in this Consent Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, EPA's right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages. The Respondent reserves all rights it may have to oppose and defend against such claims and actions and to assert any claims it may have against EPA or any person, government agency, the Commonwealth or any political subdivision thereof, or any legal entity recognizable by law. The Respondent reserves its rights to contest and challenge any factual allegation, finding, determination or conclusion set forth herein. However, the Respondent will not contest EPA's jurisdiction to issue and enforce this Consent Order or the validity of any of the requirements of this Consent Order in any action by EPA to enforce this Order.
- B. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligation to comply with applicable local, State or Federal laws and regulations.
- C. As provided by this Consent Order, EPA expressly reserves its right to disapprove of actions taken by the Respondent pursuant to this Order and work performed by the Respondent, and reserves its right to request that the Respondent perform response actions in addition to those required by the approved Work Plan including approved modifications thereto, if it determines that such actions are necessary. In the event that Respondent chooses to perform such additional tasks, the approved Work Plan shall be revised and reviewed accordingly and the schedule for completion of the work set forth in the Work Plan shall be extended to the extent necessary to accommodate the performance of additional tasks. In the event that the Respondent declines

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to perform such additional actions, EPA reserves the right to undertake such actions. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP, to seek reimbursement for any costs incurred and/or to seek any other appropriate relief, including requiring Respondent to perform such actions. Further, EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response costs, including oversight costs, incurred by the United States at the Site not reimbursed by the Respondent. Except as otherwise provided in this Consent Order and except as to proceedings to enforce this Consent Order, the Respondent reserves all rights it may have to oppose and defend against such claims and actions and to assert any and all claims it may have against EPA or any person, government agency, the Commonwealth or any political subdivisions thereof, or any legal entity recognizable by law. The Respondent reserves any right it may have to bring any action otherwise available against any person as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

- D. If EPA requests, Respondent shall incorporate and integrate information supplied by EPA into the final RI and FS reports.
- E. Following termination of the Order pursuant to Section XXVIII, below, Respondent shall have resolved its liability to EPA for the performance of the RI/FS for the operable unit that is the subject of this Order, except for those aspects of the RI/FS that survive the termination of the Order pursuant to Section XXVIII, below. The Respondent is not released from liability, if any, for any actions beyond the terms of this Order regarding removals, other operable units, remedial design/remedial action (RD/RA) of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

XIX. REIMBURSEMENT OF COSTS

- A. Following each annual anniversary date of this Order, EPA shall submit to the Respondent an accounting of response costs, including oversight costs, paid by the United States Government with respect to this Consent Order. Oversight costs shall include administrative, enforcement, inspection

and investigative costs pursuant to Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607, relating to this Consent Order, including all costs paid by EPA, its agents or contractors in connection with EPA's oversight of the work done by the Respondent under the terms of this Consent Order including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, costs of compiling cost documentation, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, Site visits, interpretation of Consent Order provisions, discussions regarding disputes that may arise as a result of this Consent Order, and review and approval or disapproval of reports.

- B. Subject to Paragraph C, below, the amount billed shall be due and payable by Respondent no later than thirty (30) calendar days from receipt of the accounting identified in Paragraph A, above, of this Section. Respondent shall, within thirty (30) calendar days of receipt of the demand from EPA, remit a check for the amount of those costs. Interest shall begin to accrue on the unpaid balance from that date, even if there is a dispute or an objection to any portion of the costs. Payment shall be made in the manner and to the address specified in Paragraph E, below.
- C. The Respondent can object to any portion of the costs as being calculated incorrectly and/or having been incurred in a manner inconsistent with the NCP. Any such portion shall be subject to the dispute resolution procedures set forth in Section XVII. Respondent shall have the burden of proving inconsistency with the NCP. The portion of the costs not in dispute must be paid in accordance with Paragraphs A and B, above.

Stipulated penalties shall not accrue during the resolution of such dispute as to costs if, simultaneously with invoking the dispute resolution procedures, Respondent establishes an interest bearing escrow account in a bank duly chartered in the Commonwealth of Pennsylvania and remits to that escrow account funds equivalent to the amount of disputed costs and keeps such funds in the escrow account pending resolution of the dispute. The Respondent shall send to EPA a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under

which the escrow account is established, a bank statement showing the initial balance of the escrow account and a copy of the escrow agreement establishing the escrow account.

After dispute resolution, if EPA determines that costs are owed by Respondent, Respondent shall remit a check for such costs, including interest, or, if the Respondent has established an escrow account, shall direct the escrow holder to remit escrowed monies in the amount of such costs, including interest, to EPA within thirty (30) calendar days of notification of EPA's determination. Interest shall be calculated from the date such costs were originally due, as set forth in Paragraph B, above. Payment shall be made in the manner and to the address specified in Paragraph E, below. The balance, if any, in the escrow account after payment to EPA shall be disbursed to the Respondent.

- D. EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at the Site.
- E. Checks should be made payable to the Hazardous Substance Superfund, should specifically reference the Site, and should be addressed to:

EPA, Region III
ATTENTION: Superfund Accounting
P.O. Box 360515M
Pittsburgh, PA 15251

A copy of the transmittal letter and check shall be sent to the EPA Project Manager and to the EPA Region III Regional Hearing Clerk at the address specified in Section XV.B, above.

XX. OTHER CLAIMS

- A. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling,

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transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Site.

- B. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
- C. By consenting to the issuance of this Consent Order the Respondent waives for purposes of this Consent Order any claim to reimbursement for all work performed and expenses incurred under this Consent Order it may have under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

XXI. OTHER APPLICABLE LAWS

- A. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, State and Federal laws and regulations.
- B. Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's designated Project Manager of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.
 - 1. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.
 - 2. The identity of the receiving facility and state will

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be determined by Respondent following the award of the contract for the remedial investigation and feasibility study. Respondent shall provide all relevant information, including information under the categories noted in paragraph (1) above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

XXII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its agents, independent contractors, receivers, trustees and assigns in carrying out activities required by this Consent Order except in those instances where EPA orders or requires work over the objection of the Respondent in the dispute resolution procedure relating to a health and safety issue and the Respondent carries out the work in the manner ordered or required by the EPA. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

XXIII. LIABILITY OF THE UNITED STATES GOVERNMENT

Except as provided in the Federal Torts Claims Act, neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assignees, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Order, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out activities pursuant to this Order. The Respondent shall not be liable for any injuries or damages to persons or property resulting from negligence or wrongful acts or omissions of the EPA and its employees, agents, servants, or assignees committed in carrying out any activities pursuant to this Order.

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XXIV. MISCELLANEOUS

- A. Except as otherwise provided in this Order, the term "days" shall mean calendar days. If a due date for any task or deliverable falls on a Federal holiday or weekend, the due date for that task or deliverable shall be the next working day.
- B. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondent shall notify EPA and the Commonwealth immediately. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Project Manager by telephone within twenty (24) hours of discovery of the unanticipated or changed circumstances. In addition to the circumstances for modification specified in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan in writing accordingly. Respondent shall perform the Work Plan as modified or amended.

XXV. SUBSEQUENT MODIFICATION

- A. This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA.
- B. Minor modifications to the requirements of the Work Plan, specifically those which do not materially or significantly affect the nature, scope or timing of the work to be performed, may be made by mutual agreement of the Project Managers. Any such modifications must be in writing and signed by both Project Managers. The effective date of the modification shall be the date on which the letter from EPA's Project Manager is signed.
- C. Any request made by the Respondent for modification of this Order, whether by amendment or minor modification, shall be accompanied by a statement of how such modification shall affect the Work Plan schedule.
- D. Following EPA approval of a modification to a schedule, Respondent agrees that within fourteen (14) days of receipt

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of the modification, it will supply to EPA a revised Work Plan schedule and accompanying charts which shall reflect the approved modifications to such schedule.

- E. Any reports, plans, specifications, schedules, or other submissions required by this Consent Order and any modifications thereto are, upon approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved or modified reports, plans, specifications, schedules, or other submissions shall be considered noncompliance with the requirements of this Consent Order and will subject the Respondent to the applicable provisions of Section XV (Delay in Performance and Stipulated Penalties), above.
- F. No informal advice, guidance, suggestions or comments by EPA, other than a formal approval as specified in Paragraphs A and B, above, regarding reports, plans, specifications, schedules and any other writing submitted by the Respondent or regarding any other requirement of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order, and to comply with requirements of this Order, unless formally modified.

XXVI. EFFECTIVE DATE

EPA will forward a fully executed true and correct copy of this Consent Order to Respondent via United States certified mail. The effective date of this Consent Order will be the date of receipt of such fully executed true and correct copy by Respondent, as indicated on the certified mail receipt returned to EPA.

XXVII. NO ADMISSIONS

- A. By entering into this Consent Order, or by taking any action in accordance with it, the Respondent does not admit any of the findings of fact, conclusions of law, determinations or any of the allegations contained in this Consent Order, nor does the Respondent admit liability for any purpose or admit any issues of law or fact or any responsibility for the alleged release or threat of release of any hazardous substance into the environment. The participation of the

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Respondent in this Consent Order shall not be admissible against the Respondent in any judicial or administrative proceeding, except in an action by the EPA to enforce the terms of this Consent Order, or actions to which EPA is a party, which allege injury based, in whole or in part, on acts or admissions of the Respondent in connection with performance under this Consent Order.

- B. It is the intent of the parties hereto that neither the terms of this Consent Order, including any allegation, finding, conclusion or determination set forth herein, nor the act of performance hereunder, shall be used against the Respondent as a collateral estoppel or res judicata in any other proceeding with EPA, the Commonwealth, or with any governmental agency, or with any other person, other than a proceeding by EPA to enforce the terms of this Consent Order.
- C. By signing and consenting to this Consent Order or by taking any actions pursuant to this Consent Order, the Respondent does not concede that the RI/FS or any other investigation at the Site is necessary to protect the public health or welfare or the environment, or for another reason; that the methodologies or protocols prescribed by applicable EPA guidance or described or noted herein or otherwise required by the EPA for performance of work pursuant to this Consent Order are the only ones appropriate for the proper conduct of this RI/FS; or that a release or threatened release of a hazardous waste or substance at the Site, or any disposal of a hazardous waste or substance at the Site, may present an imminent and substantial endangerment to the public health or welfare or the environment. The Respondent has agreed to this Consent Order to avoid unnecessary conflict or litigation.

XXVIII. TERMINATION AND SATISFACTION OF ORDER

- A. When Respondent believes that all of the requirements of this Consent Order have been completed, Respondent shall give written notice to EPA ("Respondent's termination petition").
- B. EPA shall either agree or disagree within ninety (90) days of EPA's receipt of the Respondent's termination petition, which response shall be in writing and shall include

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reasons, if any, for EPA's disagreement. However, EPA's failure to respond within ninety (90) days shall not be construed as an agreement by EPA that the requirements of this Consent Order have been completed, unless and until EPA issues a Record of Decision for this Site based on this RI/FS. EPA's response shall be subject to Section XVII (Dispute Resolution). The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon: (1) the Respondent's receipt of written notice from EPA, following receipt of Respondent's termination petition, that the Respondent has demonstrated and certified, to the satisfaction of EPA, that all the terms of this Consent Order have been completed, (2) EPA taking over the entire RI/FS from the Respondent, or (3) issuance of a Record of Decision without written notice from EPA that EPA disagrees with Respondent's termination petition. None of these three events shall, however, terminate Respondent's obligation to comply with Sections XIV (Record Preservation), XVIII (Reservation of Rights), XIX (Reimbursement of Costs), XXI (Other Applicable Laws), and XXII (Indemnification of the United States Government).

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IT IS SO AGREED AND ORDERED:

DATE:

10/16/91

BY:

Andrew Carlin

for EDWIN B. ERICKSON
REGIONAL ADMINISTRATOR
U.S. EPA
REGION III

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The undersigned hereby certifies that she/he is authorized to execute this Consent Order on behalf of Neville Land Company and to bind Neville Land Company to the terms and conditions herein.

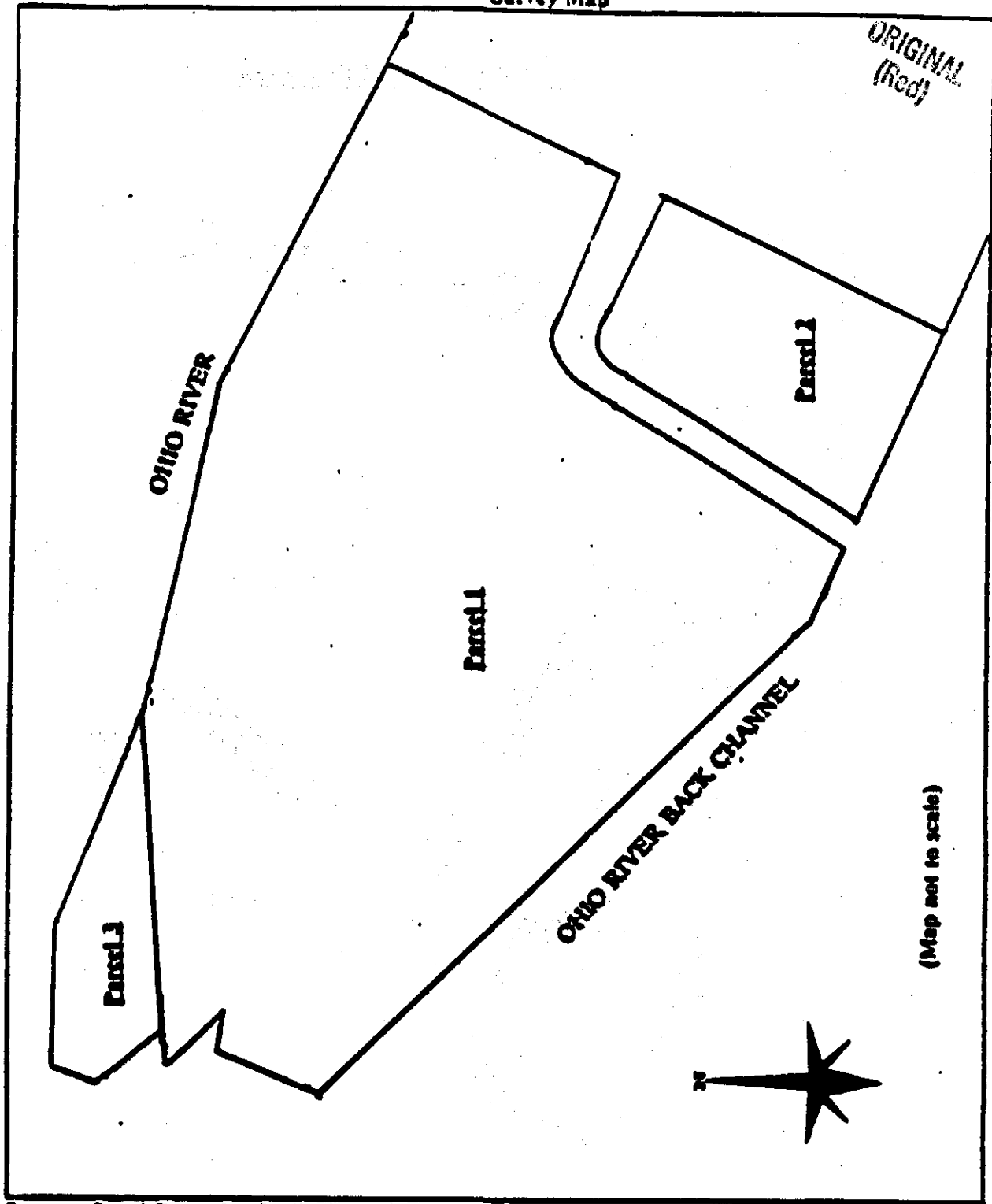
Date: October 1, 1991

BY: 

Neville Land Company
Name: Mark J. Laskow
Title: Secretary

Survey Map

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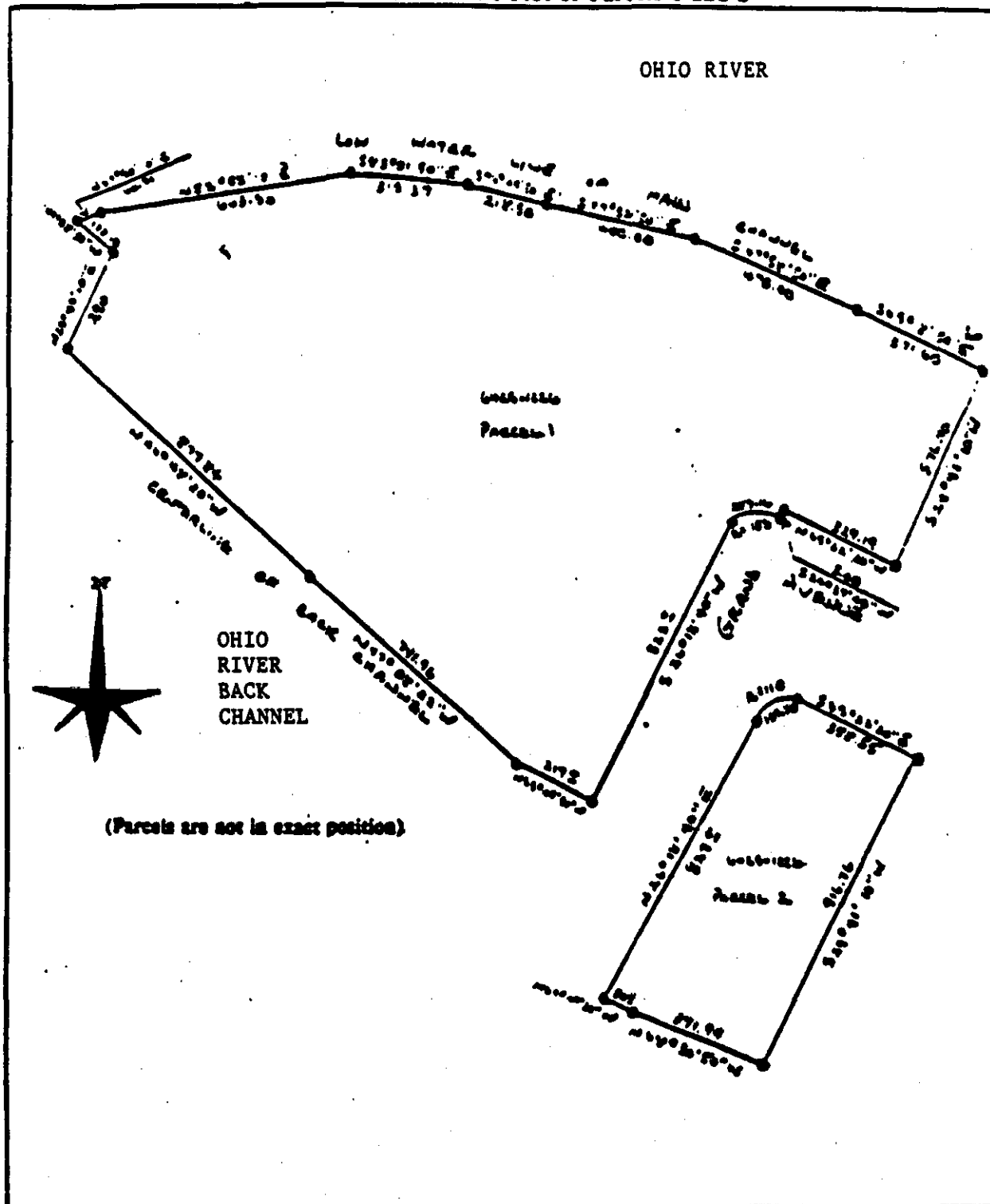
Source: Land Records of Allegheny County

Ohio River Park Site
Neville Island
Allegheny County, Pennsylvania

ATTACHMENT A
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Title Examiner's Plot of Parcels 1 and 2

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Source: Metro Settlement Title Company September 14, 1990

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